IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 12605 of 2004(A)

PETITIONER: PETITIONER

MANJUSHA V.,
D/O.N.SUBRAMONIAN,
MANOJ BHAVAN,
ELANGAMANGALAM,
ENATHU P.O.,
PATHANAMTHITTA.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS: RESPONDENTS

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1. THE KERALA PUBLIC SERVICE COMMISSION,
REP: BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

2. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
PATHANAMTHITTA.

3. R.MANOJ KUMAR,
S/O.RAJAPPAN,
K.M.G. VILASOM,
CHOORAKODE,
ADOOR,
PATHANAMTHITTA DIST.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P. (C) No. 12605 OF 2004 A

Dated this the 21st day of December, 2006

J U D G M E N T

The petitioner was included in the rank list for appointment of last grade servants. However, when her turn came, she was passed over and the 3rd respondent was advised in her place, although the 3rd respondent's rank was No.904 as against rank No.847 of the petitioner. Therefore the petitioner has filed this writ petition seeking the following relief:

> (i) issue a writ of mandamus or any other appropriate writ, order or direction commanding respondents 1 and 2 to cancel the advice for employment given to the 3rd respondent and consequently advise the petitioner to the post of Night Watchman in the Regional Artificial Insemination Project Centre, Pathanamthitta.

2. The PSC has filed a counter affidavit stating that the petitioner being a lady, she is not eligible for being appointed against certain posts in the last grade service like that of watchman of all categories, watcher and chowkidar, by virtue of Rule 5(b) of the Kerala Last Grade Services Special Rules. Therefore, when the petitioner's turn came, she was passed over to be advised later to a suitable post at the earliest possible opportunity. The learned counsel for the petitioner argues that Rule 5(b) has been declared to be unconstitutional by this

court.

3. The counsel for the petitioner points out that the Note to Rule 5(b) which makes women candidates ineligible for being appointed against certain posts has been struck down by this court as unconstitutional in the decision of ***Rajamma Vs. State of Kerala and others*** reported in 1983 KLT 457 and recently in the decision of ***Sheeba Kuttiatan Vs. State of Kerala*** reported in 2006 (3) KLT69. In view of that legal position, the PSC cannot take a stand that the petitioner could not be advised against the vacancy to which the 3rd respondent has been advised. Consequently, the PSC is liable to be directed to cancel the advise given to the 3rd respondent and to advise the petitioner against the vacancy to which the 3rd respondent has been advised. This process shall be completed, within a period of two months from the date of receipt of a copy of this judgment. I further make it clear that the 3rd respondent shall not be disturbed, if there is sufficient which has arisen subsequently for accommodating him. However, for the purpose of the seniority, the petitioner should be taken to have been advised earlier to the 3rd respondent.

The writ petition is allowed as above.

(S. SIRI JAGAN, JUDGE)

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